

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA GEAR CORPORATION,)
Plaintiff)
)
)
v.) No. 02CV4359
)
)
ACSA STEEL FORGINGS, S.P.A.,)
Defendant)

MOTION TO REMAND OF PLAINTIFF PENNSYLVANIA GEAR CORPORATION

Plaintiff, Pennsylvania Gear Corporation (“Penngear”) by and through its counsel, hereby files this Motion to Remand, and in support thereof states as follows:

1. Plaintiff commenced this action by Complaint filed in the Court of Common Pleas of Bucks County, Pennsylvania on or about June 5th, 2002. A true and correct copy of Plaintiff’s Complaint is attached hereto as Exhibit “A”.
2. Plaintiff’s Complaint against Defendant ACSA Steel Forgings, S.P.A (“ACSA”) seeks recovery for damages incurred due to ACSA’s conversion of tooling equipment manufactured for Penngear. The Complaint also asserts a count for unjust enrichment based on the tooling issue.
3. On or about July 1st, 2002, Defendant filed a Notice of Removal of the state court case to this Court. A true and correct copy of Defendant’s Notice of Removal is attached hereto as Exhibit “B”.
4. Defendant’s Notice Removal asserts that “As stated in complaint the amount in controversy is in excess of \$75,000, exclusive of interest and costs.” See Exhibit “B” ¶ 4.
5. Defendant bases its argument for jurisdiction in this Court upon 28 U.S.C. §1332, i.e., diversity jurisdiction. See Exhibit “B” ¶5.

6. However, this matter does not meet the amount in controversy requirement for diversity of citizenship jurisdiction set forth in 28 U.S.C §1332.

7. On its face, exclusive of interest and costs, the matter in controversy that is the subject of Plaintiff's Complaint does not exceed \$75,000. Count I of Plaintiff's Complaint, seeks the amount of \$53,425 plus interest and such further relief as the Court may deem appropriate. Count II, seeks an amount in excess of \$50,000. See Exhibit "B".

8. Accordingly, this Court is without subject matter jurisdiction and the matter should be remanded to state court, pursuant to 28 U.S.C. §1447 (c).

WHEREFORE, Plaintiff Pennsylvania Gear Corporation respectfully requests that this Court grant its motion and remand this action to the Court of Common Pleas of Bucks County Pennsylvania, and further order Defendant to pay Plaintiff all costs, including reasonable attorneys fees, that Plaintiff incurred in drafting and presenting its Motion to Remand.

Respectfully submitted,

KAPLIN STEWART MELOFF REITER AND STEIN, P.C.

By: _____
Mohammad A. Ghiasuddin, Esquire
Attorney ID #83925
350 Sentry Parkway
Building 640
Blue Bell, PA 19422-0765
Attorney for Plaintiff

Dated: October 1, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was caused to be sent by first class mail, postage prepaid by the undersigned on the date stated below, to the addressee stated below and at the address stated below:

Craig A. Markham, Esquire
ELDERKIN, MARTIN, KELLY & MESSINA
150 East Eighth Street
Erie, PA 16501

Robert J. Catalde, Esquire
Catalde & Bradford
731 French Street
Erie, Pennsylvania 16501

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By: _____
Mohammad A. Ghiasuddin, Esquire

Dated: October 1, 2002

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Defendant)

ORDER

And now on this ____ day of _____ 2002, upon consideration of Plaintiff's Motion to Remand and any response thereto, it is hereby ORDERED and DECREED that this case is remanded to the Court of Common Pleas of Bucks County Pennsylvania, and further ORDERED and DECREED that Defendant shall pay Plaintiff all costs, including reasonable attorneys fees, that Plaintiff incurred in drafting and presenting this Motion to Remand, and Plaintiff shall file within ten (10) days of the date of this Order a bill of costs, setting forth all costs including attorneys fees incurred in drafting and presenting its Motion to Remand for further consideration by the Court.

By the Court: